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Attorneys for Defendant  
**PRATT & WHITNEY CANADA CORP.**

**FILED**  
AUG 7 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
**E-filing**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LORI REZABEK-KELLS,  
individually, as Successor-in-Interest,  
as Personal Representative of the  
Estates of PAUL KELLS and  
CONNOR KELLS, deceased, and as  
GUARDIAN AD LITEM for  
MARGARET KELLS and LAUREN  
KELLS, minors,

DONALD RUETZ, individually, as  
Successor-in-Interest, and as Personal  
Representative of the Estates of  
CYNTHIA RUETZ, RAYMOND  
RUETZ, and TYLER RUETZ,  
deceased, VANESSA GERMANI,  
DANIEL NELSON and DONALD  
NELSON, individually and as  
Successors-in-Interest of the Estate of  
CYNTHIA RUETZ,

Plaintiffs,

vs.

PILATUS AIRCRAFT, LTD.,  
PILATUS BUSINESS AIRCRAFT,  
LTD., PRATT & WHITNEY  
CANADA CORP., GG AIRCRAFT  
LLC, DOES 1-25,

Defendants.

**CASE NO. 08**

**3795**

[Removal from Superior Court of  
California for the County of San  
Francisco, Case No. CGC-07-465132]

**DEFENDANT PRATT & WHITNEY  
CANADA CORP.'S NOTICE OF  
REMOVAL OF ACTION UNDER 28  
U.S.C. § 1332(A)(1) AND § 1441(B)**

**[DIVERSITY OF CITIZENSHIP]**

Complaint Filed: July 13, 2007

**FAXED**

1 TO THE CLERK OF THE NORTHERN DISTRICT COURT OF CALIFORNIA  
2 AND TO PLAINTIFFS AND THEIR COUNSEL:

3 PLEASE TAKE NOTICE that Defendant Pratt & Whitney Canada Corp.  
4 ("P&WC") hereby removes this action from the Superior Court of California for  
5 the County of San Francisco, to the United States District Court of the Northern  
6 District of California, pursuant to 28 U.S.C. § 1332(a)(1), § 1441(b) (Diversity of  
7 Citizenship) and § 1446. This Court has jurisdiction over this action pursuant to 28  
8 U.S.C. § 1332(a). The removal of this action is based on the following:

9 **FACTUAL BACKGROUND**

10 1. Plaintiffs Lori Rezabek-Kells, individually, and as Personal  
11 Representative of the Estates of Paul Kells and Connor Kells, deceased; Lori  
12 Rezabek-Kells as Guardian ad Litem for Margaret Kells and Lauren Kells, minors;  
13 Donald Ruetz, individually, and as Personal Representative of the Estates of  
14 Cynthia Ruetz, Raymond Ruetz, and Tyler Ruetz, deceased; Vanessa Germani,  
15 Daniel Nelson and Donald Nelson, individually, and as Successors in Interest of  
16 the Estate of Cynthia Ruetz (hereinafter collectively "Plaintiffs") filed this lawsuit  
17 on July 13, 2007 in the Superior Court of California for the County of San  
18 Francisco, being designated as Case No. CGC-07-465132 (hereinafter "the State  
19 Court Action"). A copy of the Complaint in the State Court Action is attached  
20 hereto as Exhibit "A".

21 2. Plaintiffs allege numerous causes of action involving wrongful death,  
22 survivorship, negligence, strict product liability and breach of warranty arising out  
23 of an aircraft accident near Playa Flamingo, Costa Rica, on July 16, 2005. *See*  
24 *Compl.* at ¶¶ 15-18, 20-25, 27-33, 35-38, 40-44.

25 3. Plaintiffs allege that they have suffered injuries as described therein  
26 including personal injuries and subsequent death, loss of support, loss of  
27 companionship, property damage, and incidental expenses. *See Compl.* at ¶¶ 18,  
28 25, 33, 38, 44.

1           4.     Plaintiffs originally named defendant, GG Aircraft LLC, which is a  
2 Delaware corporation with its principal place of business in California. However,  
3 on March 19, 2008 the Court held the settlement between Plaintiffs, GG Aircraft  
4 LLC, and individual members of the Gund family to be in good faith. *See* Order  
5 Denying Motion to Contest Settlement (“Good Faith Order”) attached hereto as  
6 Exhibit “B”. The Court ordered that any and all complaints or cross-complaints  
7 filed against any of the settling parties in connection with the settled claims were  
8 barred. *See* Good Faith Order at pp. 2:23-25. On August 5, 2008, pursuant to the  
9 good faith settlement, Plaintiffs voluntarily dismissed GG Aircraft LLC, the only  
10 remaining California defendant. *See* Request for Dismissal filed in State Court  
11 action attached hereto as Exhibit “C.” Plaintiffs also previously dismissed the  
12 Pilatus defendants, neither of which are a California corporation.

13           5.     This Court has subject matter jurisdiction over this action and all  
14 claims asserted against the defendants pursuant to 28 U.S.C. § 1332(a).

15           6.     Because this Court has subject matter jurisdiction over this action,  
16 removal of this action to the Court is proper pursuant to 28 U.S.C. § 1441.

17           7.     Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c)(2) and  
18 1441(a), because the United States District Court for the Northern District of  
19 California is the federal judicial district and division embracing the Superior Court  
20 of California for the County of San Francisco, where the State Court Action was  
21 originally filed.

22           8.     This Notice of Removal is timely filed in compliance with 28 U.S.C.  
23 § 1446, because it is filed within thirty days after the case became removable when  
24 the non-diverse defendant in this action was dismissed. As set forth above, this  
25 case became removable when the last remaining California defendant was  
26 voluntarily dismissed on August 5, 2007. This removal is being filed on August 7,  
27 2008.

28     ///

1           9.     The are no remaining defendants in this action to join in this removal.

2           10.    Pursuant to 28 U.S.C. § 1446(d), P&WC is filing this Notice of  
3 Removal with this Court, serving a copy of this Notice upon Plaintiffs' counsel and  
4 filing a copy in the Superior Court of California for the County of San Francisco.

5           **DIVERSITY JURISDICTION – COMPLETE DIVERSITY**

6           11.    This Court has subject matter jurisdiction over this action and all  
7 claims asserted against the defendants pursuant to 28 U.S.C. § 1332(a).

8           12.    Under 28 U.S.C. § 1332(a), federal courts have original jurisdiction  
9 over all civil actions where the action is between citizens of different States and the  
10 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest or  
11 costs. *See* 28 U.S.C. § 1332(a).

12          13.    As set forth below, this action satisfies all requirements for federal  
13 jurisdiction under 28 U.S.C. § 1332(a).

14          14.    **Citizenship:** The Defendants and Plaintiffs in this matter are citizens  
15 of different States and/or foreign states. Upon information and belief, Plaintiffs  
16 Lori Rezabek-Kells (as both individual and personal representative for the Estates  
17 of Paul Kells and Connor Kells), Margaret Kells, minor, and Lauren Kells, minor,  
18 are citizens of the State of California. *See* Compl. at ¶ 1. Plaintiffs Donald Ruetz  
19 (as both individual and personal representative for the Estates of Cynthia Ruetz,  
20 Raymond Ruetz and Tyler Ruetz), Vanessa Germani-Ruetz, Donald Nelson and  
21 Daniel Nelson are also citizens of the State of California. *See* Compl. at ¶ 2.

22    The remaining defendants are as follows:

- 23           • Pratt & Whitney Canada Corp. is an unlimited liability company  
24           incorporated under the laws of Canada with its principal place of  
25           business in Longueuil, Québec, Canada.

26          15.    As seen above, no defendant is a citizen of California. Accordingly,  
27 the requirement of complete diversity is satisfied. *See* 28 U.S.C. § 1332(a).

28    ///



1        16. **Amount in Controversy:** It is facially apparent from the Complaint  
2 that Plaintiffs seek an amount in controversy in excess of \$75,000.00. This is  
3 evidenced by the claims and damages sought. This case involves the death of two  
4 adults and three minor children. The decedents have left surviving spouses, minor  
5 children, and other family members. Plaintiffs seek damages for wrongful death,  
6 survivorship, negligence, strict product liability and breach of warranty. Plaintiffs'  
7 prayer includes general consequential damages, special damages, funeral/burial  
8 expenses, loss of earnings and earning capacity, and damage to personal property.  
9 Therefore, the amount in controversy clearly exceeds \$75,000.00, exclusive of  
10 interest and costs, based on the allegations themselves. Accordingly, the amount in  
11 controversy requirement is satisfied. *See* 28 U.S.C. § 1332(a).

12        17. Because 28 U.S.C. § 1332(a) confers federal subject matter  
13 jurisdiction over this action, removal of this action to this Court is proper pursuant  
14 to 28 U.S.C. § 1441.

15        18. Pursuant to the applicable provisions of 28 U.S.C. § 1441 and other  
16 applicable statutes that P&WC has complied with, this cause of action is  
17 removable to the United States District Court for the Northern District of  
18 California.

19        WHEREFORE, for the reasons set forth above, P&WC requests that this  
20 Court assume full jurisdiction over this action as provided by law.

21  
22 DATED: August\_7, 2008

**MENDES & MOUNT, LLP**

23  
24 By: \_\_\_\_\_

25 GARTH W. AUBERT  
26 COURTNEY M. POEL  
27 Attorneys for Defendant  
28 **PRATT & WHITNEY**  
**CANADA CORP.**

## **EXHIBIT “A”**

**ORIGINAL**

**FILED**

San Francisco County Superior Court

JUL 13 2007

GORDON PARK-LI, Clerk

BY: Joe P. P...  
Deputy Clerk

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15 *Attorneys for Plaintiffs*

**CASE MANAGEMENT CONFERENCE SET**

**DEC 14 2007 -9<sup>00</sup>AM**

**DEPARTMENT 212 NO SUMMONS ISSUED**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN FRANCISCO**

**UNLIMITED JURISDICTION**

13 LORI REZABEK-KELLS, individually, as  
14 Successor in Interest, as Personal  
15 Representative of the Estates of PAUL  
16 KELLS and CONNOR KELLS,  
17 deceased, and as GUARDIAN AD  
18 LITEM for MARGARET KELLS and  
19 LAUREN KELLS, minors,

20 DONALD RUETZ, individually, as  
21 Successor in Interest, and as Personal  
22 Representative of the Estates of  
23 CYNTHIA RUETZ, RAYMOND RUETZ,  
24 and TYLER RUETZ, deceased,  
25 VANESSA GERMANI, DANIEL  
26 NELSON and DONALD NELSON,  
27 individually and as Successors in  
28 Interest of the Estate of CYNTHIA  
RUETZ,

**Plaintiffs,**

**vs.**

24 PILATUS AIRCRAFT, LTD., PILATUS  
25 BUSINESS AIRCRAFT, LTD., PRATT  
26 & WHITNEY CANADA CORP., GG  
27 AIRCRAFT LLC, DOES 1-25,

**Defendants.**

Case No. **C8C-07-465132**

**COMPLAINT FOR WRONGFUL  
DEATH and SURVIVAL DAMAGES**

**JURY TRIAL DEMANDED**

BY FAX

1 Plaintiffs, LORI REZABEK-KELLS, individually, as Successor in Interest, as  
 2 Personal Representative of the Estates of PAUL KELLS and CONNOR KELLS, deceased,  
 3 and as GUARDIAN AD LITEM for MARGARET KELLS and LAUREN KELLS, minors, and  
 4 DONALD RUETZ, individually, as Successor in Interest, and as Personal Representative  
 5 of the Estates of CYNTHIA RUETZ, RAYMOND RUETZ, and TYLER RUETZ, deceased,  
 6 VANESSA GERMANI, DANIEL NELSON and DONALD NELSON, individually and as  
 7 Successors in Interest of the Estate of CYNTHIA RUETZ, allege against the defendants  
 8 as follows:

9 **JURISDICTION AND VENUE**

10 1. Plaintiffs LORI REZABEK-KELLS, MARGARET KELLS, minor, and LAUREN  
 11 KELLS, minor, are citizens of California.

12 2. Plaintiffs DONALD RUETZ, VANESSA GERMANI-RUETZ, DONALD  
 13 NELSON and DANIEL NELSON are citizens of California.

14 3. Defendant PILATUS BUSINESS AIRCRAFT, LTD., and DOES 1-3, are a  
 15 Colorado corporation with its principal place of business in Colorado; Defendant PILATUS  
 16 AIRCRAFT, LTD., and DOES 4-6, are a foreign corporation with its principal places of  
 17 business in Switzerland. At all times mentioned herein, PILATUS AIRCRAFT, LTD., by  
 18 and through its agents and PILATUS BUSINESS AIRCRAFT, LTD., a wholly owned  
 19 subsidiary incorporated in Colorado (together referred to herein as "PILATUS"), and DOES  
 20 1-6, were and are doing substantial business in and had contacts with the State of  
 21 California sufficient for this Court to exercise jurisdiction over these defendants.

22 4. Defendant PRATT & WHITNEY CANADA CORP. (referred to as "PRATT &  
 23 WHITNEY"), and DOES 7-9, are a foreign corporation with its principal place of business  
 24 in Canada. At all times relevant, PRATT & WHITNEY, and DOES 7-9, was and is doing  
 25 substantial business in and had contacts with the State of California sufficient for this Court  
 26 to exercise jurisdiction over it.

27 5. Plaintiff is informed and believes and thereon alleges that at all times herein  
 28 mentioned, defendant GG AIRCRAFT LLC (hereinafter "GG AIRCRAFT") and DOES 10-12



1 was a Delaware Limited Liability Company with its principal place of business and  
2 members in San Francisco, California. At all times relevant, GG AIRCRAFT, and DOES  
3 10-12, were and are doing substantial business in and had contacts with the State of  
4 California sufficient for this Court to exercise jurisdiction over it.

5 6. Plaintiffs are informed and believe and thereon allege that at all times herein  
6 mentioned, defendants DOES 1-25, inclusive, and each of them, are individuals and  
7 business organizations, the precise nature of which is not presently known to plaintiff, and  
8 said defendants were authorized to and were doing business in, the County of Los  
9 Angeles, State of California. Once the exact business nature of said defendants is  
10 ascertained by plaintiffs, the complaint will be amended to allege said defendants' correct  
11 business status and capacity. Plaintiffs are further informed and believe and thereon  
12 allege that at all times herein mentioned, defendants DOES 1-25, inclusive, were involved  
13 in the cause or contributed to the subject accident and/or injuries to the plaintiffs.

14 7. The full extent of the facts linking the fictitiously designated DOE defendants  
15 with the causes of action herein alleged are unknown to the plaintiffs, or their true names  
16 and/or capacities, whether they are individual, plural, corporate, partnership, associate or  
17 otherwise. Defendants DOES 1 through 50, inclusive, are unknown to plaintiffs. Plaintiffs  
18 therefore sue said defendants by such fictitious names. Plaintiffs are informed and  
19 believe and thereon allege that each of the defendants designated herein as a DOE is  
20 careless, negligent, wanton, reckless, tortious and unlawfully responsible in some manner  
21 for the events and happenings hereinafter referred to and carelessly, negligently, wantonly,  
22 recklessly, tortiously, wrongfully and unlawfully caused or contributed to the cause of the  
23 injuries and damages thereby to plaintiff as herein alleged. Plaintiffs will seek leave of  
24 court to amend this complaint to show said defendants' true names and/or capacities after  
25 the same has been ascertained.

26 8. Plaintiffs are informed and believe and thereon allege that at all times  
27 relevant hereto, the defendants, and each of them, were the agents, servants, employees  
28 and joint venturers of the other remaining defendants, and were at all times herein

1 mentioned, acting within the course, scope and purpose of said agency, employment and  
2 joint venture.

3 9. Jurisdiction and venue are proper in this County and district pursuant to  
4 section 395(a) of the Civil Code in that certain of the defendants reside and/or do business  
5 in this County, and the aggregate amount of the claims exceed the jurisdictional minimum  
6 of this Court.

7 **GENERAL ALLEGATIONS**

8 10. Plaintiff LORI REZABEK-KELLS brings actions for wrongful deaths,  
9 individually, as Successor in Interest, as Personal Representative of the Estates of PAUL  
10 KELLS and CONNOR KELLS, deceased, and as GUARDIAN AD LITEM for MARGARET  
11 KELLS and LAUREN KELLS, minors. Plaintiff LORI REZABEK-KELLS is the surviving  
12 wife of PAUL KELLS and the surviving mother of CONNOR KELLS. Plaintiff MARGARET  
13 KELLS, minor, and LAUREN KELLS, minor, are the surviving daughters of PAUL KELLS  
14 and the sisters of CONNOR KELLS.

15 11. Plaintiff DONALD RUETZ brings actions for wrongful deaths, individually, as  
16 Successor in Interest, and as Personal Representative of the Estates of CYNTHIA RUETZ,  
17 RAYMOND RUETZ, and TYLER RUETZ, deceased. Plaintiff DONALD RUETZ is the  
18 surviving husband of CYNTHIA RUETZ and the surviving father of RAYMOND RUETZ,  
19 and TYLER RUETZ. Plaintiffs VANESSA GERMANI, DANIEL NELSON and DONALD  
20 NELSON, bring actions for wrongful death, individually, and as Successors in Interest of  
21 the Estate of CYNTHIA RUETZ. Plaintiff VANESSA GERMANI is the surviving daughter  
22 of CYNTHIA RUETZ. Plaintiff DONALD NELSON is the surviving father of CYNTHIA  
23 RUETZ. Plaintiff DANIEL NELSON is the surviving brother of CYNTHIA RUETZ.

24 12. On and prior to July 16, 2005, the PILATUS defendants and DOES 1-6 were  
25 in the business of designing, testing, certifying, manufacturing, inspecting, marketing,  
26 distributing, selling, servicing, maintaining, repairing, providing replacement parts, and  
27 supporting general aviation aircraft, including a certain Pilatus PC-6 Turbo Porter aircraft,  
28 serial no. 908, and FAA Registration No. N908PL (the "SUBJECT AIRCRAFT") and wrote

1 and/or approved instructions and warnings for the Subject Aircraft, and its component  
2 parts, including its flight and operations manuals, maintenance manuals, maintenance  
3 instructions, service bulletins and inspection schedules.

4 13. On and prior to July 16, 2005, defendant PRATT & WHITNEY and DOES 7-  
5 9, was in the business of designing, testing, certifying, manufacturing, inspecting,  
6 marketing, distributing, selling, servicing, maintaining, repairing, providing replacement  
7 parts, and supporting turbine engines designed for general aviation aircraft, including a  
8 certain PT6A-27 engine, serial no. PC-E42736 (the "SUBJECT ENGINE") which was  
9 installed on the Subject Aircraft and wrote and/or approved instructions and warnings for  
10 the Subject Engine, and its component parts, including its flight and operations manuals,  
11 maintenance manuals, maintenance instructions, service bulletins and inspection  
12 schedules. .

13 14. On and prior to July 16, 2005, defendants GG AIRCRAFT LLC and DOES  
14 10-12 were engaged in the business of owning, operating, controlling, using, testing,  
15 equipping, servicing, maintaining, repairing and complying with Federal Aviation  
16 Regulations for the subject aircraft.

17 15. On or about July 16, 2005, PAUL KELLS, CONNOR KELLS, CYNTHIA  
18 RUETZ, RAYMOND RUETZ and TYLER RUETZ were passengers aboard the SUBJECT  
19 AIRCRAFT as it was being flown at or near Playa Flamingo, Costa Rica, when it crashed  
20 causing serious, painful and ultimately fatal injuries to all persons on board the aircraft, and  
21 causing the plaintiffs to sustain damages within the state of California.

22 16. The accident, crash and resulting damages were caused by the careless,  
23 negligent, reckless and unlawful acts and omissions of the defendants, and each of them,  
24 as stated herein.

25 17. As a result of the foregoing, PAUL KELLS, CONNOR KELLS, CYNTHIA  
26 RUETZ, RAYMOND RUETZ AND TYLER RUETZ suffered pre-impact fear and terror, pain  
27 and suffering, physical injury, pre-death fear and terror, and were otherwise injured in a  
28 personal and pecuniary manner.



1        18. As a result of the foregoing and the matters herein alleged, plaintiffs have  
 2 sustained economic and non-economic damages, funeral and burial expenses, property  
 3 damage and all other damages available by law.

4  
 5                    **FIRST CAUSE OF ACTION FOR WRONGFUL DEATH AND SURVIVAL**  
 6                    **DAMAGES AGAINST DEFENDANTS PILATUS,**  
 7                    **PRATT & WHITNEY AND DOES 1-9**  
                   **(NEGLIGENCE ALLEGATIONS)**

8        19. Plaintiffs reallege and incorporate by reference each and every allegation and  
 9 statement contained in paragraphs 1 through 18 above as if fully set forth.

10        20. At all times herein relevant, it was the duty of defendants PILATUS and  
 11 PRATT & WHITNEY, including their officers, agents and employees, to exercise ordinary  
 12 care in the design, testing, manufacture, assembly, inspection, sale, lease, distribution,  
 13 maintenance, repair, servicing, developing and issuing instructions, and warnings, including  
 14 service intervals, inspection intervals and life limits regarding the SUBJECT AIRCRAFT  
 15 and its components, including the SUBJECT ENGINE, so as not to cause injury to or the  
 16 death of members of the public, including PAUL KELLS, CONNOR KELLS, CYNTHIA  
 17 RUETZ, RAYMOND RUETZ AND TYLER RUETZ.

18        21. Notwithstanding these duties, defendants PILATUS and PRATT & WHITNEY  
 19 breached their duties in the design, testing, manufacture, assembly, inspection, sale,  
 20 lease, distribution, maintenance, repair, servicing, developing and issuing instructions and  
 21 warnings, including service intervals, inspection intervals and life limits regarding the  
 22 SUBJECT AIRCRAFT and its components, including the SUBJECT ENGINE.

23        22. Plaintiffs are informed, believe and allege that defendants PILATUS and  
 24 PRATT & WHITNEY negligently designed and/or manufactured and/or distributed the  
 25 SUBJECT AIRCRAFT and its components, including the SUBJECT ENGINE, by utilizing  
 26 a design and materials that allowed for the premature failure of certain components during  
 27 normal and foreseeable operations.

28        23. Defendants PILATUS and PRATT & WHITNEY, as the designers and/or  
 manufacturers and/or distributors of the SUBJECT AIRCRAFT and SUBJECT ENGINE,



1 had a duty to provide adequate warnings, instructions, training materials and maintenance  
2 and inspection procedures and intervals for the SUBJECT AIRCRAFT and the SUBJECT  
3 ENGINE to ensure safe operation of the SUBJECT AIRCRAFT in normal flight, and they  
4 failed in that duty.

5 24. On or about July 16, 2005, as a direct and proximate result of one or more  
6 negligent acts or omissions of defendants PILATUS and PRATT & WHITNEY, the  
7 SUBJECT AIRCRAFT crashed.

8 25. As a direct result of the aforesaid conduct of the defendants PILATUS and  
9 PRATT & WHITNEY, and each of them, decedents PAUL KELLS, CONNOR KELLS,  
10 CYNTHIA RUETZ, RAYMOND RUETZ, and TYLER RUETZ were killed, and as a result  
11 plaintiffs LORI-REZABEK-KELLS, MARGARET KELLS, LAUREN KELLS, DONALD  
12 RUETZ, VANESSA GERMANI, DANIEL NELSON and DONALD NELSON were injured  
13 and damaged as herein alleged and according to proof at trial.

14  
15 **SECOND CAUSE OF ACTION FOR WRONGFUL DEATH AND SURVIVAL**  
16 **DAMAGES AGAINST DEFENDANTS PILATUS,**  
17 **PRATT & WHITNEY AND DOES 1-9**  
18 **(STRICT LIABILITY ALLEGATIONS)**

19 26. Plaintiffs reallege and incorporate by reference each and every allegation and  
20 statement contained in paragraphs 1 through 18 above as if fully set forth.

21 27. Plaintiffs are informed, believe and allege that defendants PILATUS and  
22 PRATT & WHITNEY, and each of them, designed, manufactured, fabricated, converted,  
23 maintained, repaired, modified, designed, assembled, distributed, bought, sold, leased,  
24 inspected, serviced, repaired, marketed, tested, warranted, and advertised the SUBJECT  
25 AIRCRAFT and the SUBJECT ENGINE, and each and every component part thereof.

26 28. Defendants were required to design and manufacture the SUBJECT  
27 AIRCRAFT and the SUBJECT ENGINE, including all service, maintenance and operations  
28 manuals so that they were free from design and manufacturing defects, and were required  
to design and manufacture an engine that would not fail in flight and/or would not subject  
critical component parts to premature failure. However, the SUBJECT ENGINE in the

1 SUBJECT AIRCRAFT was not adequately designed and/or manufactured to prevent such  
2 phenomena and was instead susceptible to in-flight failure and loss of power, thus causing  
3 the SUBJECT AIRCRAFT to be unreasonably dangerous and unsafe.

4 29. Plaintiffs are informed, believe and allege that defendants were required to  
5 provide certain warnings, instructions, training materials and maintenance and inspection  
6 intervals and procedures to operators of the SUBJECT AIRCRAFT and SUBJECT ENGINE  
7 to enable them to determine the airworthiness and proper operation of the SUBJECT  
8 AIRCRAFT and SUBJECT ENGINE. Defendants failed to warn, instruct, train and/or issue  
9 adequate maintenance and inspection procedures and other instructions regarding such  
10 dangers and/or issued inadequate warnings, instructions, training materials and  
11 maintenance and inspection procedures and intervals.

12 30. Plaintiffs are informed, believe and allege that the SUBJECT AIRCRAFT and  
13 SUBJECT ENGINE had design and/or manufacturing defects which led to an engine failure  
14 and caused catastrophic injuries to the occupants of the SUBJECT AIRCRAFT. As such,  
15 the SUBJECT AIRCRAFT and SUBJECT ENGINE were defective, not fit for their intended  
16 purposes, and were unreasonable unreasonably dangerous by reason of defective design,  
17 manufacture, assembly, inspection, testing, warning, instruction, sale, lease, service,  
18 repair, and/or maintenance on the part of defendants PILATUS and PRATT & WHITNEY.

19 31. Plaintiffs are informed, believe and allege that Defendants PILATUS and  
20 PRATT & WHITNEY, and each of them, knew of the defects and failed to warn of the  
21 defects.

22 32. Plaintiffs are informed, believe and allege that at the time of the accident, the  
23 SUBJECT AIRCRAFT and SUBJECT ENGINE were being operated and used for the  
24 purposes and in a manner for which they were designed, manufactured, assembled,  
25 inspected, tested, sold, leased and intended to be used, and in a manner reasonably  
26 foreseeable to defendants, and in the condition without substantial change from its original  
27 condition when it was sold, leased and delivered by defendants PILATUS and PRATT &  
28 WHITNEY.

1        33. As a direct result of the defects in the SUBJECT AIRCRAFT and SUBJECT  
 2 ENGINE and the conduct of defendants PILATUS and PRATT & WHITNEY, and each of  
 3 them, decedents PAUL KELLS, CONNOR KELLS, CYNTHIA RUETZ, RAYMOND RUETZ,  
 4 and TYLER RUETZ were killed, and as a result plaintiffs LORI REZABEK-KELLS,  
 5 MARGARET KELLS, LAUREN KELLS, DONALD RUETZ, VANESSA GERMANI, DANIEL  
 6 NELSON and DONALD NELSON were injured and damaged as herein alleged and  
 7 according to proof at trial.

8  
 9                    **THIRD CAUSE OF ACTION FOR WRONGFUL DEATH AND SURVIVAL**  
 10                    **DAMAGES AGAINST DEFENDANTS PILATUS,**  
                      **PRATT & WHITNEY AND DOES 1-9**  
                      **(BREACH OF WARRANTY ALLEGATIONS)**

11        34. Plaintiffs reallege and incorporate by reference each and every allegation and  
 12 statement contained in paragraphs 1 through 33 above as if fully set forth.

13        35. Plaintiffs are informed, believe and allege that prior to the time the SUBJECT  
 14 AIRCRAFT and SUBJECT ENGINE were sold and delivered, through the date of the  
 15 accident, defendants PILATUS and PRATT & WHITNEY expressly and/or impliedly  
 16 warranted and represented that the SUBJECT AIRCRAFT and engine, including their  
 17 instructions and warnings, were free from defects, were airworthy, were of merchantable  
 18 quality, fit and safe for the purpose for which they were designed, manufactured,  
 19 assembled, inspected, tested, sold, leased, serviced, repaired, maintained, and intended  
 20 to be used. Defendants further warranted that the instructions, warnings and maintenance  
 21 and inspection procedures and intervals regarding the SUBJECT AIRCRAFT and engine  
 22 were adequate.

23        36. Plaintiffs are informed, believe and allege that at the time the were sold,  
 24 leased and delivered, through the date of the accident, the defendants breached their  
 25 warranties in that the SUBJECT AIRCRAFT and SUBJECT ENGINE were defective, not  
 26 airworthy, not of merchantable quality, not fit and safe for the purpose for which they were  
 27 designed, manufactured, assembled, inspected, tested, sold, leased, serviced, repaired,  
 28 maintained, and intended to be used. Defendants further breached said warranties in that



1 the instructions, warnings and maintenance and inspection procedures and intervals were  
2 not adequate.

3 37. Plaintiffs are informed, believe and allege that on the day of the accident,  
4 decedents PAUL KELLS, CONNOR KELLS, CYNTHIA RUETZ, RAYMOND RUETZ, and  
5 TYLER RUETZ, by way of their invitation to be transported on the SUBJECT AIRCRAFT,  
6 were intended beneficiaries of the warranties extended by the defendants.

7 38. As a direct result of the aforesaid breach of express and implied warranties  
8 by defendants PILATUS and PRATT & WHITNEY, and each of them, decedents PAUL  
9 KELLS, CONNOR KELLS, CYNTHIA RUETZ, RAYMOND RUETZ, and TYLER RUETZ  
10 were killed, and as a result plaintiffs LORI REZABEK-KELLS, MARGARET KELLS,  
11 LAUREN KELLS, DONALD RUETZ, VANESSA GERMANI, DANIEL NELSON and  
12 DONALD NELSON were injured and damaged as herein alleged and according to proof  
13 at trial.

14  
15 **FOURTH CAUSE OF ACTION FOR WRONGFUL DEATH AND SURVIVAL**  
16 **DAMAGES AGAINST THE GG AIRCRAFT DEFENDANTS AND DOES 10-15**  
**(NEGLIGENCE ALLEGATIONS)**

17 39. Plaintiffs reallege and incorporate by reference each and every allegation and  
18 statement contained in paragraphs 1 through 38 above as if fully set forth.

19 40. Prior to and on July 16, 2005, and at all other relevant times herein, the GG  
20 AIRCRAFT DEFENDANTS and DOES 10-12 owned, inspected, maintained, controlled,  
21 used and operated the subject aircraft.

22 41. On July 16, 2005, while the GG AIRCRAFT DEFENDANTS and DOES 10-12  
23 operated the subject aircraft on the subject flight, the subject aircraft crashed, causing  
24 plaintiffs' decedents to suffer serious injuries, death and resulting damages.

25 42. Defendant GG AIRCRAFT DEFENDANTS and DOES 10-12 owed plaintiffs'  
26 decedents a duty of care with respect to the use, operation, control and maintenance of  
27 the subject aircraft so as not to cause injuries, death or damages.

28 43. The crash of the subject aircraft and the resulting injuries, death and



1 damages were directly and proximately caused by the negligence, wrongdoing,  
2 carelessness, fault, and omission on the part of the GG AIRCRAFT DEFENDANTS and  
3 DOES 10-12, in that the GG AIRCRAFT DEFENDANTS and DOES 10-12, failed to  
4 exercise the degree of care necessary to ensure that the subject flight was conducted in  
5 the safest possible manner, utilizing a properly designed, manufactured and maintained  
6 aircraft suitable for the subject flight.

7 44. As a direct result of the aforesaid negligence of the GG AIRCRAFT  
8 DEFENDANTS and DOES 10-12, and as a direct and proximate result of the acts and  
9 omissions of defendants as stated herein, decedents PAUL KELLS, CONNOR KELLS,  
10 CYNTHIA RUETZ, RAYMOND RUETZ, and TYLER RUETZ were killed, and as a result  
11 plaintiffs LORI REZABEK-KELLS, MARGARET KELLS, LAUREN KELLS, DONALD  
12 RUETZ, VANESSA GERMANI, DANIEL NELSON and DONALD NELSON were injured  
13 and damaged as herein alleged and according to proof at trial.

14  
15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiffs expressly reserves the right to amend the complaint up to  
17 and including the time of trial to include all theories of recovery and items of damages not  
18 yet ascertained, and demand judgments against Defendants as follows:

- 19 1. For general damages as set forth herein in a sum in excess of the jurisdiction  
20 of this Court and according to proof;
- 21 2. For special damages as set forth herein and according to proof;
- 22 3. For funeral and burial expenses according to proof;
- 23 4. For loss of earnings and loss of earning capacity in an amount according to  
24 proof;
- 25 5. For damage to personal property;
- 26 6. For prejudgment interest according to proof, to the extent authorized by law;
- 27 7. For costs of suit incurred herein; and

28 ///

Dated: July 12, 2007

KREINDLER & KREINDLER LLP

By:

STUART R. FRAENKEL  
NOAH H. KUSHLEFSKY  
BRIAN J. ALEXANDER  
Attorneys for Plaintiffs

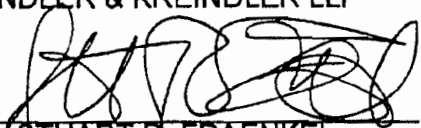
**DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a trial by jury.

Dated: July 12, 2007

KREINDLER & KREINDLER LLP

By: \_\_\_\_\_

  
STUART R. FRAENKEL  
NOAH H. KUSHLEFSKY  
BRIAN J. ALEXANDER  
Attorneys for Plaintiffs

## **EXHIBIT “B”**



JONATHAN S. MORSE (SBN 74812)  
THE MORSE LAW GROUP  
2800 28<sup>th</sup> Street, Suite 130  
Santa Monica, California 90405-6213

Telephone: (310) 396-0700  
Facsimile: (310) 396-0900

Attorneys for Defendant GG Aircraft LLC

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 19 2008

GORDON PARK-LI, Clerk  
BY: \_\_\_\_\_  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

LORI REZABEK-KELLS, etc., et al.,

DONALD RUETZ, etc., et al.,

Plaintiffs,

vs.

PILATUS AIRCRAFT, LTD., etc., et al,

Defendants.

) CASE NO. GGC-07-465132

) ~~PROPOSED~~ ORDER DENYING MOTION  
) TO CONTEST SETTLEMENT AND  
) DETERMINING PROPOSED SETTLEMENT  
) TO BE IN GOOD FAITH  
) [C.C.P. §877.6 (a) (2)]

) ACTION FILED: July 13, 2007

There has been presented to this Court the Amended Application of Defendant GG AIRCRAFT LLC (acting on behalf of itself and all other persons and entities identified as Releasees in the proposed Settlement Agreement) for an Order determining the good faith of their proposed settlement with the plaintiffs in this matter.

Defendant Pratt & Whitney Canada Corp. has filed a Motion to Contest the Good Faith of the proposed settlement set forth in GG Aircraft LLC's original application. The settlement agreement in the original application and the settlement agreement in the amended application are identical except for additional promises by two of the releasees and clerical changes, and the motion to contest good faith settlement of the original settlement agreement is deemed to be a motion to contest the good faith of the amended settlement agreement.

1 Pratt & Whitney Canada Corp.'s motion came on for hearing on January 17, 2008 and was  
2 continued to March 19, 2008 to permit Pratt & Whitney to conduct further discovery.

3 On March 19, 2008, Pratt & Whitney Canada Corp.'s motion came on for hearing in  
4 Department 302 of this Court. Garth Aubert appeared for defendant Pratt & Whitney Canada  
5 Corp. Jonathan S. Morse appeared for defendant GG Aircraft LLC. Stuart Fraenkel appeared for  
6 plaintiffs. Having reviewed all documents submitted in support of and in opposition to the  
7 motion, having heard arguments of counsel, and being fully advised in the premises, this Court  
8 finds that Pratt & Whitney has not sustained its burden of proof to contest the proposed settlement  
9 and the motion is denied.

10 IT APPEARING TO THE SATISFACTION OF THE COURT THAT (i) the Amended  
11 Application of GG Aircraft LLC is made pursuant to California Code of Civil Procedure §  
12 877.6(a)(2); (ii) copies of the Amended Notice of Conditional Settlement [CCP Section 877.6],  
13 Amended Notice of Sliding Scale Agreement [CCP Section 877.5], Amended Application for  
14 Determination of Good Faith Settlement (with a copy of the proposed Settlement Agreement  
15 attached thereto) were served by Certified Mail, Return Receipt Requested on Pilatus Aircraft Ltd.,  
16 upon counsel for Pilatus Business Aircraft Ltd. and upon counsel of record for Pratt & Whitney  
17 Canada Corp.; (iii) no notice of motion to contest the good faith of settlement (other than the  
18 Motion of Pratt & Whitney Canada Corp.) has been served or filed within the time allowed by  
19 California Code of Civil Procedure § 877.6(a)(2); and (iv) no confidentiality clause of any kind is  
20 contained as part of said settlement; now, therefore, IT IS ORDERED that the Settlement  
21 described in said Amended Application is in good faith within the meaning of California Code of  
22 Civil Procedure § 877.6.

23 IT IS FURTHER ORDERED that any and all complaints or cross complaints filed or  
24 hereafter filed against any of the settling parties for contribution, or partial or comparative  
25 indemnity, in connection with any of the settled claims are barred.

26 MAR 19 2008  
27 DATED: \_\_\_\_\_

PATRICK J. MAHONEY

JUDGE OF THE SUPERIOR COURT

## **EXHIBIT “C”**

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Stuart R. Fraenkel (SBN 173991) KREINDLER & KREINDLER LLP 707 Wilshire Boulevard, Suite 4100 Los Angeles, CA 90017 TELEPHONE NO.: 213-622-6469		FOR COURT USE ONLY          CASE NUMBER:  CGC-97-465132
ATTORNEY FOR (Name): Plaintiffs Lori Kells, et al. & Donald Ruetz, et al. Insert name of court and name of judicial district and branch court, if any: Superior Court of California, County of San Francisco		
PLAINTIFF/PETITIONER: Lori Kells, et al. & Donald Ruetz, et al. DEFENDANT/RESPONDENT: Pilatus Aircraft, Ltd., et al.		
REQUEST FOR DISMISSAL <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):		
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

## 1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition  
 (3) ☐ Cross-complaint filed by (name):  
 (4) ☐ Cross-complaint filed by (name):  
 (5) ☐ Entire action of all parties and all causes of action  
 (6) ☒ Other (specify):\* As to GG Aircraft LLC, only.

on (date):


on (date):

Date: August 5, 2008

Stuart R. Fraenkel

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.



(SIGNATURE)

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

## 2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).



(SIGNATURE)

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):  
 4. ☐ Dismissal entered on (date): as to only (name):  
 5. ☐ Dismissal not entered as requested for the following reasons (specify):  
 6. ☐ a. Attorney or party without attorney notified on (date):  
 b. Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to conformed ☐ means to return conformed copy

Date:

Clerk, by \_\_\_\_\_

Deputy

Page 1 of 1

## REQUEST FOR DISMISSAL



**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 707 Wilshire Boulevard, Suite 4100, Los Angeles, California 90017.

On August 5, 2008, I served the foregoing document described as follows:

**REQUEST FOR DISMISSAL**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as

X BY MAIL:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE:

I caused to be delivered such envelope by hand to the offices of the addressee.

BY FEDERAL EXPRESS OR OVERNIGHT COURIER

BY ELECTRONIC MAIL:

I served by electronic mail at the email address(es) below:

BY TELECOPIER:

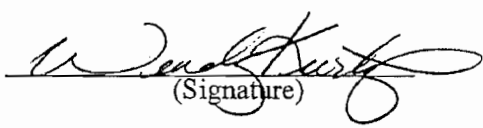
I served by facsimile at the numbers listed below:

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 5, 2008, at Los Angeles, California.

Wendy Kurtz  
(Type of Print Name)

  
(Signature)

**SERVICE LIST**

*Kells, et al. v. Pratt & Whitney Canada Corp., et al.*  
Case No. CGC-97-465132

Mr. Garth W. Aubert  
**MENDES & MOUNT LLP**  
445 South Figueroa Street, 38th Floor  
Los Angeles, CA 90071-1601  
Telephone: 213-955-7700  
Facsimile: 213-955-7725  
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*Attorneys for Defendant,  
Pratt & Whitney Canada Corp.*

Jonathan S. Morse (CA SBN 74812)  
**MORSE LAW GROUP**  
2800 28th Street, Suite 130  
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*Attorneys for Defendant,  
GG Aircraft LLC*

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balexander@kreindler.com

*Attorneys for Plaintiffs, Lori Kells,  
individually and as guardian ad litem for  
Margaret and Lauren Kells, minors,  
Donald Ruetz, Vanessa Germani, Daniel  
Nelson and Donald Nelson*

Stuart R. Fraenkel (CA SBN 173991)  
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Telecopier: 213-622-6019  
Email: sfraenkel@kreindler.com

*Attorneys for Plaintiffs, Lori Kells,  
individually and as guardian ad litem for  
Margaret and Lauren Kells, minors,  
Donald Ruetz, Vanessa Germani, Daniel  
Nelson and Donald Nelson*

PROOF OF SERVICE

STATE OF CALIFORNIA } Kells v. Pilatus Aircraft, Ltd.  
 COUNTY OF LOS ANGELES } ss. SFSC Case No. CG-07-465132  
 Our File No. 390,583

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 445 S. Figueroa Street, Suite 3800, Los Angeles, California 90071.

On August 7, 2008, I served the document described as **DEFENDANT PRATT & WHITNEY CANADA CORP.'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1332(A)(1) AND § 1441(B)** on the interested parties in this action, as follows:

SEE ATTACHED SERVICE LIST

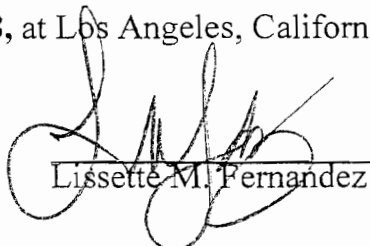
X (By U.S. Mail) By placing \_\_\_\_\_ the original / X a true copy thereof enclosed in a sealed envelope, with postage fully paid, addressed as per the attached service list, for collection and mailing at Mendes & Mount in Los Angeles, California following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

\_\_\_\_ (By Facsimile) I transmitted from a facsimile transmission machine whose telephone number is (213) 955-7725 the above-entitled document to the parties listed on the attached Service List and whose facsimile transmission machine telephone number is indicated. The above-described transmission was reported as complete without error by a transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission. A true and correct copy of the said transmission report is attached hereto and incorporated herein by this reference.

\_\_\_\_ (By FedEx) I placed the above-entitled document in a FedEx (Overnight) envelope/pouch as addressed and indicated on the attached service list, with delivery fees paid or provided for and deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf.

X (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 7, 2008, at Los Angeles, California.

  
 Lissette M. Fernandez

**SERVICE LIST**

**VIA U.S. Mail**

Attorneys for Plaintiff  
Stuart R. Fraenkel  
Kreindler & Kreindler  
707 Wilshire Blvd., Ste.  
4100  
Los Angeles, CA 90017  
213-622-6469 / 213-622-  
6019 (Fx)

**Via U.S. Mail**

Jonathan S. Morse  
The Morse Law Group  
2800 28<sup>th</sup> Street, Ste. 130  
Santa Monica, CA 90405-  
6213  
310-396-0700 / 310-396-  
0900 (Fx)

**Via U.S. Mail**

Noah Kushlefsky  
Brian J. Alexander  
Kreindler & Kreindler,  
LLP  
100 Park avenue  
New York, NY 10017  
212-687-8181  
212-972-9432